

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: M. SALAHUDDIN KHAN and MATTHEW FRIEDRICH

Application No. 09/784,660



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on February 06, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

EXAMINER'S ANSWER

Evidence Relied Upon

On June 2, 2006, an Examiner's Answer was mailed. A review of the Examiner's Answer reveals that it is not in compliance with the Manual of Patent Examining Procedure (MPEP). In the "Evidence Relied Upon" (section 8), it is indicated that "[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal".

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This section should identify the prior art relied upon to reject the claims on appeal. In accordance with MPEP § 1207.02, the "Evidence Relied Upon" (section 8) should include:

(8) Evidence Relied Upon

A listing of evidence relied on (e.g., patents, publications, admitted prior art), and in the case of non-patent references, the relevant page or pages.

To remedy this error and before further review, the Examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of references mentioned in the statement of rejections. Appropriate correction is required.

INFORMATION DISCLOSURE STATEMENT

An Information Disclosure Statement (IDS) was filed on January 22, 2007. A review of the Image File Wrapper reveals that the examiner has not considered the IDS. According to MPEP § 609 which states:

“....The Examiner must also fill in his or her name and the date the information was considered in the blocks at the bottom of the PTO-1449 or PTO/SB/08A and 08B form.”

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner for appropriate action on the following:

- 1) to correct the examiners answer, issue and mail a PTOL-90 citing the missing references listed under the Evidence Relied Upon section, paragraph (8); and
- 2) for consideration of the IDS filed January 22, 2007 and written notification to the applicant of such consideration; and

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3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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